

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 TAMAR DAVIS LARSEN,

No. C 11-05495 CRB

12 Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS AND
DENYING PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND
COSTS**

13 v.

14 KING ARTHUR FLOUR COMPANY,

15 Defendant.
16 _____/

17 Now before the Court are Plaintiff Tamar Davis Larsen's Motion to Dismiss, dkt. 31,
18 and her Motion for Attorneys' Fees and Costs, dkt. 34, in this putative class action. The
19 Court finds these matter suitable for resolution without oral argument pursuant to Civil Local
20 Rule 7-1(b), and VACATES the hearing currently set for Friday, June 29, 2012. Having
21 carefully reviewed the parties' filings, the Court rules as follows.

22 Plaintiff moves to voluntarily dismiss the case with prejudice and with each party
23 bearing its own attorneys' fees, costs and expenses pursuant to Federal Rule of Civil
24 Procedure 41(a). Both Plaintiff and Defendant agree that the instant case should be
25 dismissed with prejudice, and neither Defendant nor putative class members will suffer
26 "plain legal prejudice as a result" of the voluntary dismissal. See Smith v. Lenches, 263 F.3d
27 972, 975 (9th Cir. 2001). Attorneys' fees and costs will not be imposed as a condition for
28 voluntary dismissal with prejudice because there is no risk of future litigation. See Burnette

1 v. Godshall, 828 F. Supp. 1439, 1443 (N.D. Cal. 1993); see also Rodriguez v. Serv. Emp.
 2 Int'l, No. 10-1377, 2011 WL 4831201, at *3 (N.D. Cal. Oct. 12, 2011) (denying defendants'
 3 request for costs as a condition of dismissal pursuant to Rule 41(a)(2) because plaintiffs
 4 stipulated to dismissal with prejudice and the case was "not exceptional"). Thus, the Court
 5 GRANTS Plaintiff's Motion to Dismiss with prejudice, and each party is to bear its own
 6 attorneys' fees and costs.¹

7 Plaintiff also moves for attorneys' fees and costs pursuant to California Code of Civil
 8 Procedure section 1021.5. Defendant adequately documents that Plaintiff's action did not
 9 motivate the Defendant to provide the primary relief sought. See Graham v.
 10 DaimlerChrysler Corp., 34 Cal. 4th 553, 567 (2004). Plaintiff cannot be considered a
 11 "successful party" because she did not catalyze Defendant to modify its behavior. See id.
 12 Accordingly, the Court DENIES Plaintiff's Motion for Attorneys' Fees and Costs.

13 **IT IS SO ORDERED.**

14
 15 Dated: June 29, 2012


 16 CHARLES R. BREYER
 17 UNITED STATES DISTRICT JUDGE
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

¹ The Court declines Defendant's invitation to impose sanctions under Rule 41 or Rule 11.